

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.1349 of 2012
and M.P.No.1 of 2012

Moses Aided Middle School
Azath Salai, Vijayapuram,
Tiruvarur,
rep. by its Power Agent Muruganandam,
90-A, Illam, Durgalaya Salai,
South Sethi Vattam,
Tiruvarur Taluk and District. .. Petitioner

Vs.

Kamala Kristy Krays .. Respondent

Revision filed under Article 227 of Constitution of India against
the fair and decretal order of the District Munsif Court in I.A.No.710 of
2011 in O.S.No.49 of 2011, dated 21.12.2011.

For Petitioner : Mr.S.Sounthar

For Respondent : No appearance

ORDER

This revision is directed against the order of the District Munsif
Court, Tiruvarur in I.A.No.710 of 2011 in O.S.No.49 of 2011, dated
21.12.2011, dismissing the petition filed by the petitioner under

Section 151 of the Code of Civil Procedure, 1908, to issue summons to the witnesses mentioned in the list of witnesses. The petitioner herein is the plaintiff in the suit.

2. The plaintiff has filed the suit for permanent injunction restraining the defendant, her men and agents from interfering with the peaceful possession and enjoyment of the suit property. Resisting the suit, the defendant filed the written statement.

3. When the suit is pending for examination of plaintiff's side witnesses, the petitioner has filed I.A.No.710 of 2011 to issue summons to the witnesses mentioned in the witness list.

4. Resisting I.A.No.710 of 2011, the respondent filed counter stating that the suit is for permanent injunction and that Balkis Banu, who allegedly transferred the right to the school, has not been made as party and, therefore, there is no necessity to summon and examine the witnesses mentioned in the witness list.

5. Upon consideration of the rival submissions, the trial Court dismissed the petition by observing that there is no need for the petitioner to examine the witnesses mentioned in the list of witness.

The trial Court held that there is no specific reason for the delay in filing the witness list.

6. Learned counsel for the petitioner submits that in the written statement, the defendant stated that the petitioner has to prove that suit buildings were built out of funds collected by donations and in order to prove the same, the petitioner has to necessarily examine persons who donated funds.

7. I heard Mr.S.Sounthar, learned counsel for the petitioner and perused the materials available on record. Respondent has not entered appearance.

8. Objection of the respondent before the trial Court was that since the suit is one for bare injunction and the respondent has not claimed any right over the suit property, there is no necessity for the petitioner to examine the witnesses mentioned in the list of witness.

9. On a perusal of the order of the trial Court, I find that on the side of plaintiff, PW1 was examined and during cross-examination by the defendant, a question was posed to the effect that whether the school building was constructed with the donations collected, for which

PW1 replied 'yes', which necessitated the petitioner to file petition to summon and examine the witnesses mentioned in the list of witnesses.

10. The trial Court observed that *"simply because the question that whether the school building was built out of donation put to PW1 does not mean that the defendant/respondent has denied it. Further, simply because the question that whether the school building was built out of donation put to PW1 does not mean it is the real dispute. The real dispute to be decided is whether the defendant/respondent attempted to encroach the suit property. Moreover, the defendant/respondent has never claimed any right title/possession over the suit property. So, this court feels that there is no need for the plaintiff/petitioner to examine the witnesses as mentioned in the witness list"*.

11. The aforesaid finding of the trial Court is not acceptable for the reason that it is the bounden duty of the plaintiff to prove his case. In order to prove his case, the plaintiff has to examine witnesses at his choice and the defendant can very well cross-examine them.

12. Though the petitioner has filed the petition at the stage when the suit was pending for examination of plaintiff's side witnesses, in

the nature of the allegations set out in the plaint and the denial made by the defendant in his written statement, the petition to summon and examine the witnesses listed out in the list of witnesses is liable to be allowed. No prejudice would be caused to the respondent, if the witnesses listed out in the list of witnesses are summoned and examined.

13. In the result:

(a) the order of the trial Court in I.A.No.710 of 2011 in O.S.No.49 of 2011 dated 21.12.2011 is set aside and the revision is allowed;

(b) the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2012 is closed.

सत्यमेव जयते

12.12.2016

Note: Issue order copy on 16.02.2018

vs

Index : Yes/No

Internet : Yes/No

To

The District Munsif,
Tiruvarur.

WEB COPY

M.V.MURALIDARAN,J.

VS



C.R.P.(PD)No.1349 of 2012
and
M.P.No.1 of 2012

WEB COPY

12.12.2016